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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PAUL MITCHELL,

No. C 06-06559 SBA (PR)

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Petitioner,

ORDER OF DISMISSAL

10

v.

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CHARLES C. PLUMMER,

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Respondent.

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Petitioner Paul Mitchell, a pretrial detainee at Santa Rita County Jail, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because there is no state judgment, the Court deems the petition to have been brought pursuant to 28 U.S.C. § 2241, the general habeas statute. See White v. Lambert, 370 F.3d 1002, 1006 (9th Cir. 2004) (listing pretrial detention as example of when § 2241 applies).

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In an Order dated April 24, 2007, the Court informed him that pre-conviction habeas challenges must first be exhausted in state court and also that they usually are barred by the abstention doctrine. The petition was dismissed with leave to amend to say whether he has exhausted available state judicial remedies, and to specifically allege special circumstances which would warrant federal intervention at this stage of the case.

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On May 23, 2007, Petitioner filed an amended petition.

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DISCUSSION

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Principles of comity and federalism require that this court abstain and not entertain Petitioner's pre-conviction habeas challenge unless he shows that: (1) he has exhausted available state judicial remedies, and (2) "special circumstances" warrant federal intervention. See Carden v. Montana, 626 F.2d 82, 83-84 (9th Cir. 1980). Only in cases of proven harassment or prosecutions

1 undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in
2 other special circumstances where irreparable injury can be shown is federal injunctive relief against
3 pending state prosecutions appropriate. See id. at 84 (citing Perez v. Ledesma, 401 U.S. 82, 85
4 (1971)). In his amended petition, Petitioner makes no such showing of "special circumstances"
5 warranting federal intervention before the trial is held and any appeal is completed. See id.
6 Accordingly, this Court will abstain, and his petition is DISMISSED without prejudice. The alleged
7 problems that Petitioner claims he is enduring are matters that can and should be addressed in the
8 first instance by the trial court, and then by the state appellate courts, before he seeks a federal writ
9 of habeas corpus.

10 The dismissal of this action is without prejudice to Petitioner filing a new habeas petition,
11 but he should not file a new federal petition for writ of habeas corpus unless he is convicted or
12 committed and then not until his direct appeal and state habeas proceedings have concluded and he
13 has given the state's highest court a fair opportunity to rule on each of his claims.

14 **CONCLUSION**

15 The petition for a writ of habeas corpus is DISMISSED without prejudice to refiling after
16 state criminal proceedings, including appeal, are completed.¹

17 The Clerk of the Court shall enter judgment in accordance with this Order, terminate all
18 pending motions as moot, and close the file.

19 IT IS SO ORDERED.

20 DATED: 10/18/07

Saundra B. Armstrong
21 SAUNDRA BROWN ARMSTRONG
United States District Judge

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27 ¹ To whatever extent Petitioner also seeks to challenge the conditions of his confinement, he
28 must do so in a separate civil rights complaint under 42 U.S.C. § 1983. See, e.g., Badea v. Cox, 931
F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of
confinement).

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA

5 PAUL MITCHELL,

6 Plaintiff,

Case Number: CV06-06559 SBA

7 **CERTIFICATE OF SERVICE**

8 v.

9 CHARLES C. PLUMMER et al,

10 Defendant.
11 /

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 19, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

14
15 Paul Mitchell BBC609
16 Santa Rita County Jail
17 5325 Broder Blvd.
18 Dublin, CA 94568-3309

Dated: October 19, 2007

19 Richard W. Wieking, Clerk
20 By: LISA R CLARK, Deputy Clerk